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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

[redacted]

File: [redacted] Office: CHAROLTTE, NORTH CAROLINA Date: MAY 12 2003

IN RE: Applicant: [redacted]

Application: Application for Advance Processing of Orphan Petition (Form I-600A) Pursuant to 8 C.F.R. § 204.3(c)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC) of the Charlotte, North Carolina office denied the Application for Advance Processing of Orphan Petition (Form I-600A) and affirmed his decision in a subsequent motion to reopen. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The application will be denied.

The applicant filed the Form I-600A with the OIC on February 1, 2002. The applicant is a 40-year-old married citizen of the United States who, together with her spouse, is seeking to adopt a child from India.

The director denied the application pursuant to 8 C.F.R. § 204.3(h)(4) because the applicant failed to disclose her criminal history.

On appeal, the applicant submits a statement. Counsel submits a brief and additional evidence. Counsel states, in part, that the evidence establishes the applicant's and her spouse's abilities to provide a proper home environment for an adopted orphan.

Section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), states that the Bureau of Citizenship and Immigration Services (Bureau), formerly the Immigration and Naturalization Service (INS), may approve a Form I-600A only if the Bureau is satisfied that the applicant will provide proper parental care to an adopted orphan.

The Form I-600A focuses on the ability of the prospective adoptive parents to provide a proper home environment and on their suitability as parents. This determination, based primarily on a home study report by an adoption agency, and a mandatory and confidential investigation of the applicant's background, is essential for the protection of the orphan. 8 C.F.R. § 204.3(a)(2).

The OIC originally denied the application on May 13, 2002. According to the OIC, the Bureau had received a favorable recommendation from the home study preparer, The Datz Foundation, and a letter from the North Carolina Department of Heath and Human Services, Division of Social Services, which determined that the applicant and her spouse were in compliance with the pre-adoption requirements in the State of North Carolina. The OIC noted, however, that the mandatory, confidential investigation of the petitioner's identity and background revealed that the applicant had a criminal record, namely, two felony arrests for forgery of endorsement and uttering forged endorsement. The OIC acknowledged that the Bureau did not have a record of the disposition of those arrests. Nevertheless, the OIC stated that both The Datz Foundation and the State of North Carolina had rescinded their endorsements of the applicant and her spouse as adoptive parents and, therefore, the application was denied pursuant to 8 C.F.R. § 204.3(h)(4) for failure to disclose a criminal history.

On May 22, 2002, the OIC reopened the proceedings on a Bureau motion because the applicant was not afforded an opportunity to submit evidence in rebuttal prior to the denial of the application on May 13, 2002. The OIC allowed the petitioner 30 days to submit evidence to show why the application should not be denied. However, prior to the Bureau's service of that motion on the applicant, the applicant appealed the denial of the application that was dated May 13, 2002. In her appeal, the applicant submitted a copy of her conviction, a copy of a summons against one of the beneficiary's employers, a letter from the applicant detailing the circumstances surrounding her conviction, and a copy of the letter from The Datz Foundation rescinding its approval of the applicant's home study. The applicant informed the OIC that she had found another agency that would provide her with a home study report, which would recommend her and her spouse as adoptive parents.

A copy of the applicant's conviction revealed that on March 6, 2002, the applicant was convicted of two counts of Common Law Forgery, which carried a sentence of 12 months of probation and restitution in the amount of $1,150. A letter from the applicant's probation officer indicated that the applicant was in compliance with the terms of her probation and did not pose any problems at the present time.

The applicant provided information about the circumstances that led to her arrest and conviction. The applicant also submitted a second home study report from Mandala Adoption Services (Mandala). The applicant disclosed her conviction to the home study preparer and the circumstances surrounding her arrest. In addition, the applicant stated to the home study preparer that she had never been the victim or perpetrator of substance abuse or domestic violence.

The OIC noted that the home study report from Mandala contained information that the applicant may have been the victim of substance abuse or domestic violence as a child. Therefore, the OIC directed the applicant to obtain an addendum to the home study report that addressed this issue. The home study preparer noted in the addendum that the applicant was the child of alcoholic parents. The applicant claimed that her father was, at times, verbally abusive to her and her siblings and physically abusive to her mother. The applicant claimed, however, that she had very happy memories of her father.

The OIC denied the application on September 27, 2002 for the applicant's failure to disclose her criminal history until prompted by the Bureau to do so. Additionally, the OIC noted that the applicant further failed to disclose that she had been the victim of substance abuse and domestic violence until prompted by the Bureau to be forthcoming about these issues. The OIC stated that the applicant's credibility was seriously damaged and he concluded that the applicant and her spouse would be unable to provide a proper home environment for a child.

[redacted]

At the time of filing the appeal, the applicant represented herself and stated that she fully disclosed information about her childhood and her alcoholic parents to the home study preparers from both The Datz Foundation and Mandala; however, the home study preparers chose to "down play" that information in their final reports. Regarding her arrest and conviction, the applicant stated that she was only relying on the advice of her attorney when she failed to disclose that she had been arrested. According to the applicant, her attorney informed her that the charges would be dropped and that they would not appear on her record. As already noted, this claim is not credible. The applicant did note, moreover, that within one week of receiving copies of her paperwork regarding her conviction, she presented this evidence to The Datz Foundation. The applicant stated that: she was trying to get her probation terminated; she was remorseful for what had occurred; she did not intentionally withhold any information; and she was only taking the advice of her attorney. As for mitigating circumstances, the applicant stated that she has been gainfully employed as an accountant for 10 years and has raised three girls, who are the daughters of her former husband's brother. The applicant stated that her suitability as a parent was evidenced by her ability to raise these three girls.

Subsequent to submitting her appeal to the Bureau, the applicant retained counsel, who now submits a brief and additional evidence to supplement the record of proceeding. Counsel reiterates many of the applicant's statements, including that the applicant did not intentionally withhold information from the Bureau. Regarding the applicant's conviction on two counts of Common Law Forgery, counsel states that the applicant has been rehabilitated. Counsel submits a March 7, 2003 letter from the North Carolina Department of Corrections, which indicates that the applicant was transferred to unsupervised probation in September 2002, and that the applicant is no longer under the supervision of the State of North Carolina. Counsel states that the applicant does not have a "criminal history" as the Bureau maintains, and refers to the applicant's conviction as one criminal incident.

Regarding the applicant's ability to parent, counsel submits: an affidavit from the applicant; letters of reference from friends, colleagues and family; and a psychological evaluation of the applicant and her spouse. According to the psychological evaluation, the applicant and her husband "would be thoroughly responsible, competent and caring parents." Counsel notes that the applicant continues to have custody of her youngest niece, and that, if the State of North Carolina had believed that the applicant could not provide a proper home environment, the State would have removed the niece from the applicant's home. Additionally, counsel submits a March 2003 placement assessment addendum from Mandala to reflect the applicant's completion of her probation.

Pursuant to 8 C.F.R. § 204.3(e)(2)(v), the prospective adoptive parents are expected to disclose to the home study preparer and the Bureau any history of arrest and/or conviction early in the advanced processing procedure. An applicant's criminal history and history of abuse are two factors that the Bureau considers in determining whether a prospective adoptive parent can provide a proper home environment for an adopted child.

Failure to disclose an arrest, conviction, or history of substance abuse, sexual or child abuse, and/or domestic violence, or a criminal history to the home study preparer and to the Bureau may result in the denial of the advanced processing application. 8 C.F.R. § 204.3(h)(4). Although an applicant's failure to disclose a criminal history or a history of substance abuse is not an absolute bar to the approval of an advanced processing application, the burden is on the applicant to show the existence of mitigating circumstances that caused a nondisclosure of information relating to past crimes or abuse. In reaching a determination on this issue, the Bureau shall consider any statements made by the applicant and interested parties, such as a home study preparer.

The applicant has overcome the director's denial of the application, in part, on the applicant's failure to disclose to The Datz Foundation that she had been the victim of substance abuse. A review of the evidence reveals that the applicant did not knowingly conceal information from the home study preparer regarding her family history of alcoholism. This issue does not negatively impact upon her ability to provide a proper home environment for an adopted orphan. Thus, the director's objection to the approval of the application on this basis is withdrawn.

Regarding the applicant's criminal history, the applicant challenges the validity of her conviction, claiming that: she had permission to sign the checks; that the charges grew out of a dispute with her employer; and that she pled guilty on advice of counsel because the prosecutor would not accept any other plea. It is well settled, however, that the Bureau has no authority to question the validity of a conviction. *See Matter of Reyes*, 20 I&N Dec. 789, 793 (BIA 1994). The applicant's claims about "what really happened" and her reasons for entering a guilty plea are irrelevant to this proceeding, and the Bureau will not consider them. The Bureau notes that a person charged with a felony has an absolute right to trial by jury, and can be convicted only upon proof of guilt beyond a reasonable doubt. Since counsel represented the applicant, it must be presumed that she knew of these rights and made a free and deliberate choice to plead guilty. For purposes of this appeal, therefore, it is established beyond dispute that the applicant is guilty of two counts of common law forgery, a Class I felony under North Carolina General Statutes § 14-120. *North Carolina v. Rogers*, Judgment, Nos. 01 CR 060812 & 01 CR 076208 (Wake County District Court. Filed March 6, 2002).

Although the applicant cannot challenge the validity of her conviction, she can seek to mitigate her failure to disclose the conviction. On this point, the applicant avers that: (1) she informed The Datz Foundation of her criminal record within one week of obtaining the documents relating to her conviction; (2) her attorney had informed her that the charges would be "thrown out" and would not appear on her record; (3) she does not have any prior arrests or convictions; (4) she has been an accountant in good standing for at least 10 years; and (5) she has been able to provide proper care to three girls whom she has raised.

Although section 204(d) of the Act, 8 U.S.C. § 1154(d), states that there must be a favorable home study in every case, the Bureau is not bound to follow the recommendations of the home study preparer. *Cf. Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The Bureau must make an independent assessment of an applicant's fitness as an adoptive parent. 8 C.F.R. § 204.3(h)(2).

Bureau regulations affirmatively require an applicant to disclose any arrest. 8 C.F.R. § 204.3(e)(2)(v). Even if the case had been "thrown out," the applicant still would have been required to disclose that she had been arrested.[1] The Bureau cannot excuse the applicant's failure to disclose her arrest or her conviction to The Datz Foundation at the earliest possible time, particularly when the record reveals that the applicant had been interviewed by the home study preparer on at least three occasions after her conviction in the State of North Carolina.

In her February 25, 2003 affidavit that she submits on appeal, the applicant states that: "I informed [The Datz Foundation] as soon as I was charged with the allegations of forgery." The applicant also asserted in an earlier statement that she disclosed her conviction to The Datz Foundation soon after receiving her paperwork from the courts. These statements, however, are inconsistent with evidence in the record regarding when the applicant actually disclosed her arrest and subsequent conviction The Datz Foundation.

The record contains an April 8, 2002, home study addendum from The Datz Foundation. According to The Datz Foundation, the applicant and her spouse requested the addendum "to provide updated information regarding [the applicant's and her spouse's] desire for an international placement." The addendum covered such topics as the couple's compatibility and marital satisfaction, their attitude towards adoption, and the type of child that they were seeking to adopt. According to the addendum, the home study preparer

[1] It appears that North Carolina law permits expunction of criminal records only for certain misdemeanors committed by young offenders. N.C. Gen. Stat. §§ 15A-145 through 15A-148. The applicant's offenses were felonies. *Id.* § 14-120.

interviewed the applicant and her spouse for both the original home study report and the addendum on the following dates: July 5, 2001; July 8, 2001; March 18, 2002; April 1, 2002; and April 8, 2002. Neither the original home study report nor the addendum contains information about the applicant's arrest or subsequent conviction.

The Bureau notes that the July 5, 2001 and July 8, 2001 interviews occurred subsequent to the State of North Carolina charging the applicant with two counts of common law forgery; the March 2002 and April 2002 interviews occurred subsequent to the applicant's March 6, 2002 conviction in the State of North Carolina on two counts of Common Law Forgery.

It is significant that the applicant concealed that she had been charged with two counts of forgery and had been subsequently convicted on those charges when being interviewed by a social worker from The Datz Foundation on several occasions. Even if the applicant had believed during the July 2001 interviews that the charges would be "thrown out," at the time of the March 2002 and April 2002 interviews, the applicant had already been convicted on two counts of forgery. Thus, the applicant could not have reasonably believed that the charges against her would have been dropped.

Information in record clearly contradicts the applicant's claim that she informed the home study agency as soon as she was charged with the allegations of forgery, or soon after her conviction. In its April 26, 2002 statement to rescind its home study approval, The Datz Foundation notes that the applicant, when interviewed by the social worker on July 2, 2001, "withheld the information [about her arrest] from the social worker and agency when requesting an expedited Preplacement Assessment on this same date of 7-2-01." The contradictory information in the record calls into question the reliability and sufficiency of the remaining evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without sufficient evidence to explain the inconsistencies in the record, the recommendation of the applicant and her spouse as adoptive parents from the second home study agency, Mandala, carries little weight. *Matter of Caron International, supra*.

Counsel states on appeal that the applicant does not have a "criminal history" as the Bureau maintains, and refers to the applicant's conviction as one "criminal incident." This contention, however, has no merit. A single conviction or, as here, a conviction on multiple counts arising out of a single incident is, still, a criminal history. *Any* criminal history at all *must* be disclosed. 8 C.F.R. § 204.3(e)(2)(v).

The psychological evaluation of the applicant and her spouse, and the letters from family and colleagues, do not persuade the Bureau that the applicant would be able to provide a proper home environment for an adopted child when weighed against the nature of the applicant's conviction. The applicant has been convicted of two

counts of common law forgery. This offense is a crime involving moral turpitude. *See Matter of A-*, 5 I & N Dec. 52, 53 (BIA 1953). In light of this recent and serious criminal history, the Bureau concludes that the applicant has failed to establish that she is able to provide proper parental care to an adopted orphan.

On appeal, counsel submits a March 7, 2003 letter from the North Carolina Department of Corrections, which states that the applicant is no longer under the supervision of the State of North Carolina, having served her period of probation. Bureau regulations, however, affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the application is filed. *See* 8 C.F.R. § 103.2(b)(12). The applicant's successful completion of her probation, which occurred after filing the application, cannot, therefore, be considered on appeal.

Finally, the Bureau notes that even if the applicant had been able to overcome the objections of the director, the application could not be approved. The record contains an August 30, 2002 letter from the Division of Social Services of the State of North Carolina rescinding its certification that the applicant and her spouse had met North Carolina's pre-adoptive requirements. The State decided to rescind its certification based upon the applicant's failure to disclose her criminal history to The Datz Foundation, noting that it would be happy to review a new and approved homestudy for the applicant and her spouse after the applicant's probation had expired and "there is an established period wherein there is positive evidence that her judgement and overall decision making have greatly improved."

On appeal, counsel submits a March 2003 placement assessment addendum from Mandala, which, according to counsel, will be forwarded to the Division of Social Services in the State of North Carolina for a new certification. Nevertheless, the applicant cannot meet the provision of 8 C.F.R. § 204.3(c)(1)(iv), because there currently is no evidence of compliance with preadoption requirements of the State of North Carolina.

In visa proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed. The application is denied.